



Department  
of Energy &  
Climate Change

# **Triennial Review Report: Nuclear Liabilities Financing Assurance Board (NLFAB)**

*Reviewing the function, form and governance of NLFAB*

# Executive Summary

## Aims of the review

Triennial reviews are a Cabinet Office mandated process for reviewing the function of Non-Departmental Public Bodies (NDPBs), the appropriateness of each body's delivery mechanisms and governance arrangements.<sup>1</sup> Reviews should take place every three years for each NDPB, unless an exemption is agreed by the Cabinet Office.

The aims of the NLFAB triennial review are to:

- establish whether there is strong evidence to support the continued operation of NLFAB both in terms of the function it performs and its form, namely a body at arm's length from government; and if the response is affirmative in both cases,
- examine whether NLFAB's control and governance arrangements continue to meet the recognised principles of good corporate governance.

## The outcomes

### **Stage 1**

NLFAB's function is to provide public advice to the Secretary of State on the suitability of the funding arrangements plan element of the Funded Decommissioning Programme (FDP) submitted by an operator for approval by the Secretary of State. The review team considered the function and concluded that having independent, expert advice on this complex and highly technical issue continues to play an important role in the Government's waste and decommissioning financing arrangements and should be retained.

The review team looked next at a range of models for delivering the function. Although the function could in theory be transferred to the private or voluntary sectors or to a handful of other NDPBs particularly due to its small size, the potential to do so in practice was limited by constraints relating to independence, expertise and capacity. The review team assessed the function against the Government's Three Tests to determine whether it should continue to be delivered by a NDPB and concluded that it passed each test. In addition, the review team found that NLFAB appears to be operating effectively in its current form and there was nothing to suggest that there are issues that would require the current delivery model to change. Consequently, the review team concluded that NLFAB should continue to provide the function as an advisory NDPB.

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<sup>1</sup> Full details of the Cabinet Office approach for undertaking triennial reviews can be found in its "Guidance on reviews of non-departmental public bodies":

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf)

## Stage 2

The review team found that overall NLFAB acted in compliance with the Cabinet Office corporate governance requirements. However, a number of actions were identified that could improve elements of its compliance. They can be divided into two categories of activity to be undertaken by the sponsor team: governance and future planning.

### Governance

- assess how secretariat support to NLFAB can be improved;
- review arrangements for the appointment and management of external advisors;
- improve transparency by:
  - updating and publishing the code of practice; terms of reference; and register of members' interests;
  - identifying a proportionate means of reporting annually on NLFAB's activities and including its work in DECC's Annual Report and Accounts;
  - reviewing with the Board the scope for wider public / stakeholder engagement once the advice for Hinkley Point C has been finalised;
- ensure NLFAB is brought formally within the scope of the Freedom of Information Act 2000; and
- the sponsor team to work with NLFAB members to ensure claims for fees and expenses are made in line with cost recovery guidance (i.e. at least every three months) and to process payments promptly and accurately.

Future planning: to prepare for potential membership changes when current members' terms expire in 2015

- introduce knowledge management and transfer measures to retain corporate memory;
- consider induction requirements of new members;
- assess the skills and expertise NLFAB will require in future;
- ensure current members are aware of the rules on future appointments when they leave NLFAB; and
- undertake a thorough lessons learned exercise to ensure future work can benefit from NLFAB's scrutiny of the first FDP.

### About NLFAB - summary

NLFAB is a small advisory NDPB sponsored by the Department of Energy and Climate Change (DECC). It was set up in 2009 to provide independent scrutiny and advice on the financing arrangements for the FDP which prospective operators of new nuclear power stations must submit to DECC. The operator can only undertake nuclear-related construction once the FDP has been approved by the Secretary of State.

The NLFAB triennial review was announced on 10 October 2013.

# Introduction

## Aims of the review

1. It is Government policy that an NDPB should only be set up, or remain in existence, where the model can be clearly evidenced as the most appropriate and cost-effective way of delivering the function in question. In April 2011, Cabinet Office announced that all NDPBs still in existence following the reforms brought about by the Public Bodies Act 2011 would have to undergo a substantive review at least once every three years. The first period for these reviews to take place is 2011-14.
2. Triennial reviews have two purposes:
  - i. to provide a robust challenge of the continuing need for individual NDPBs – both their function and their form, employing the ‘three tests’ discipline; and
  - ii. where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.
3. All triennial reviews are carried out in line with Cabinet Office guidance “Guidance on Reviews of Non Departmental Public Bodies”.<sup>2</sup> This guidance states that the key principles for reviews is that they are:
  - **Proportionate:** reviews must not be overly bureaucratic and should be appropriate for the size and the nature of the NDPB in question;
  - **Timely:** reviews should be completed quickly, the first stage ideally within three months, to minimise disruption to the NDPB’s business and reduce uncertainty about its future;
  - **Challenging:** reviews should be robust and rigorous. They should evidence the continuing need for individual functions and examine and evaluate as wide a range as possible of delivery options;
  - **Inclusive:** reviews should be open and inclusive. Individual NDPBs must be engaged in reviews. Key users and stakeholders should have the opportunity to contribute to reviews. Parliament must be informed about the commencement and conclusions of reviews;
  - **Transparent:** all reviews should be announced and all reports of reviews should be published; and
  - **Value for Money:** reviews should be conducted in a way that represents value for money for the taxpayer.

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<sup>2</sup> Guidance on reviews of non-departmental public bodies: [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011\\_tcm6-38900.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011_tcm6-38900.pdf)

## NLFAB and the Triennial Review Process

4. The NLFAB triennial review was announced by Michael Fallon, Minister of State for Energy, on 10 October 2013.<sup>3</sup>
5. DECC has taken a ‘light-touch’ approach to the review to reflect NLFAB’s small size, in terms of membership and budget, and the Cabinet Office principles for triennial reviews set out above, particularly proportionality and value for money. The review team comprised officials from DECC and a representative from the Department for Business, Innovation and Skills to give robust and independent challenge.
6. The timing reflects the Cabinet Office requirement that the first round of triennial reviews for all NDPBs should be completed by the end of March 2014. This triennial review has therefore been undertaken before NLFAB provided its first formal advice to the Secretary of State in relation to the Hinkley Point C FDP (the review had been scheduled for 2012/13). The review team recommends that the sponsor team undertakes a thorough “lessons learned” exercise in conjunction with the Board once the Hinkley Point C advice has been finalised.
7. The terms of reference for the review can be found at Annex A.

## Evidence and Stakeholder Engagement

8. The review team approached all seven NLFAB members, the two energy companies that have dealt directly with NLFAB in relation to FDPs, and NLFAB’s three external advisers. This group was asked to give its views on the continued relevance of NLFAB’s function; its form; and those governance questions on which they were likely to have had direct experience.<sup>4</sup> The group was chosen because of the informed contribution the review team thought it could make based on its direct knowledge and experience of NLFAB. The specific nature of NLFAB’s work, and the current position of that work, means that its engagement with external stakeholders has been limited to date. A list of the parties approached by the review team is listed in Annex B. Informal discussions were also held with the sponsor team.
9. Following the announcement of the review in October 2013, only one response was received from the public. This expressed concern that NLFAB’s advice on the Hinkley Point C FDP had not been published before the review took place. As set out above, the timing of this review has been determined by the requirement that all NDPBs are reviewed by March 2014. We expect the NLFAB’s advice on Hinkley Point C FDP to be made public once the Secretary of State has made a decision on whether or not to approve the proposed FDP.

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<sup>3</sup> Written ministerial statement announcing NLFAB Triennial Review: <https://www.gov.uk/government/news/nuclear-liabilities-financing-assurance-board-triennial-review>

<sup>4</sup> See Guidance on reviews of non-departmental public bodies: [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011\\_tcm6-38900.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011_tcm6-38900.pdf)

10. All stakeholders were invited to submit their views on Stage 1 of the review. Those who felt that NLFAB's functions continued to be of value, and that an NDPB remained the optimal vehicle for delivering those functions, were invited to provide their views on a range of questions under Stage 2. The questions put to stakeholders were drawn from Cabinet Office guidance<sup>5</sup>, chosen on the basis that stakeholder views could add value to the response. The remainder of the questions in the guidance could be answered with information and evidence held by the DECC, such as terms of reference and codes of conduct. A list of the Stage 2 questions put to stakeholders is at Annex C.
11. The Cabinet Office agreed to Stages 1 and 2 of the review being undertaken in this way, in order to maintain a proportionate and timely approach to conducting the review.
12. Responses were received from all twelve stakeholders who were invited to submit views.

### About NLFAB

13. NLFAB is a small advisory NDPB sponsored by DECC. It was set up in 2009 to provide independent scrutiny and advice on the financing arrangements for the FDP which prospective operators of new nuclear power stations must submit to DECC for approval before they can undertake any nuclear-related construction.
14. Appointments to NLFAB are made by the Secretary of State for Energy and Climate Change. There are seven serving members on the Board, including the Chair.
15. When NLFAB was being set-up DECC identified six specialisms that it wanted the Board to cover and recruited members to match these requirements. As a result members bring legal, economic, actuarial, fund management, environmental and nuclear engineering expertise to the body.
16. NLFAB's budget for 2013/2014 is £48,000 which covers members' honarium and expenses although the actual costs are likely to be in the region of £54,000. The costs in any given year are driven by the extent of engagement required from the Board in relation to an FDP submission. However all costs incurred in the course of NLFAB's scrutiny of FDP submissions by prospective new nuclear operators are recovered from the operator. In 2012/13 only some £1,500 of NLFAB's costs for members' fees and expenses could not be recovered from the operator.

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<sup>5</sup> "Advisory NDPBs: Corporate Governance Arrangements"  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/80073/Advisory\\_NDPBs\\_corporate\\_governance\\_arrangements\\_Dec12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80073/Advisory_NDPBs_corporate_governance_arrangements_Dec12.pdf)

## Nuclear waste and decommissioning

17. Although the UK is a pioneer in nuclear technology, many of its existing nuclear facilities were built with a focus on construction and operation, rather than with waste management and decommissioning in mind. Today modern reactors are constructed to allow the removal and replacement of virtually all but core components. They are designed to take account of the eventual waste management and decommissioning, to ensure that sites can be adequately cleaned-up, and to minimise the resulting waste and decommissioning costs.
18. As a result of previous Government decisions, the Government is responsible for many of the costs of decommissioning and waste management arising from existing nuclear installations. In the 2007 public consultation on nuclear power<sup>6</sup>, the Government was clear that, if new nuclear build went ahead in the UK, the costs of waste and decommissioning must be borne by the operator. Responses to that consultation<sup>7</sup> confirmed the Government's view of the need for a robust structure that would require private sector owners and operators of any new nuclear power stations to accumulate funds to cover the full costs of decommissioning and their full share of the long-term waste management costs.
19. To be satisfied that the financing arrangements for these costs were sufficiently robust, the Government established a legislative framework in the Energy Act 2008.

## Funded Decommissioning Programme (FDP)

20. The Energy Act 2008 requires operators of new nuclear power stations to have an FDP which has been approved by the Secretary of State, before nuclear-related construction can begin. The operator must continue to comply with the FDP thereafter. The FDP ensures that the operator makes secure financing arrangements to meet the full costs of decommissioning and their full share of the waste management and disposal costs. Failure to comply with the FDP is a criminal offence.
21. The Energy Act 2008 makes provision for the Secretary of State to publish guidance about the preparation, content, modification and implementation of a FDP. The Secretary of State is required to publish guidance about the factors which it may be appropriate to consider in deciding whether or not to: a) approve a programme; b) approve a programme with Modifications or subject to conditions; or c) make a

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<sup>6</sup> Public consultation on nuclear power 2007 "The future of nuclear power"  
<http://webarchive.nationalarchives.gov.uk/20081105160606/berr.gov.uk/whatwedo/energy/whitepaper/consultations/nuclearpower2007/page39554.html>

<sup>7</sup> "Future of nuclear power: analysis of consultation responses"  
<http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file43206.pdf>

proposed Modification to a programme or the conditions subject to which it is approved. FDP guidance was published in December 2011.<sup>8</sup>

### FDP Objective

22. The FDP guidance states that the objective of the FDP regime is to -

“ensure that Operators make prudent provision for:

- the full costs of decommissioning their installations; and
- their full share of the costs of safely and securely managing and disposing of their waste; and

that in doing so the risk of recourse to public funds is remote (the Objective). The Objective applies to the FDP regime as a whole.”

### Guiding factors

23. When considering whether to approve a FDP, the Secretary of State will assess whether the FDP satisfies the following range of factors<sup>9</sup>, namely that the FDP:

- provides a clear structure;
- contains realistic, clearly defined and achievable plans for decommissioning, waste management and waste disposal;
- contains robust cost estimates which take due account of risk and uncertainty;
- is transparent;
- contains clear terms and clear divisions of roles and responsibilities;
- is a durable arrangement; and
- sets out a Fund structure that demonstrates:
  - independence of the Fund;
  - measures to ensure sufficiency of the Fund;
  - restrictions on the use of Fund Assets; and
  - insolvency remoteness.

24. The guidance envisages that a FDP is divided into two parts.

- i. The first part, referred to as the Decommissioning and Waste Management Plan (DWMP) will fulfill an operator’s obligations under the Energy Act 2008, sections 45(7)(a) and (b) by setting out details of the steps to be taken in relation to what are called “Technical Matters” and the estimates of costs likely to be incurred in connection with the “Designated Technical Matters”.<sup>10</sup>
- ii. The second part, referred to as the Funding Arrangements Plan (FAP), should set out details of any security to be provided, as required under section

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<sup>8</sup> Funded Decommissioning Programme Guidance for New Nuclear Power Stations:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/70214/guidance-funded-decommissioning-programme-consult.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/70214/guidance-funded-decommissioning-programme-consult.pdf)

<sup>9</sup> Known as “the Guiding Factors”

<sup>10</sup> See section 45(6) of the Energy Act for a definition of Designated Technical Matters and section 3 of The Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010 at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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45(7)(c) of the Energy Act, in connection with meeting the estimated costs of carrying out the plans (as set out in the DWMP) for the Designated Technical Matters.

25. The primary focus of NLFAB's scrutiny is on the FAP – hereafter referred to as the funding part of the FDP.

## Role of NLFAB

26. NLFAB's purpose is to provide the Secretary of State with impartial and informed advice to help him to decide upon the suitability of the FDP funding arrangements. The suitability of these arrangements, on which NLFAB must advise, is determined by the extent to which the operator's proposals meet the FDP objective and satisfy the Guiding Factors set out above.
27. The first submission of a FDP to the Secretary of State was made by NNB Generation Company Ltd in March 2012, for the Hinkley Point C power station in Somerset. Since March 2012 NLFAB has been reviewing NNB's proposals for the funding part of the FDP. This work will conclude when the FDP submission for Hinkley Point C is finalised, at which point NLFAB will provide its advice to the Secretary of State.

## Background to NLFAB

28. In response to the 2007 Government consultation on nuclear power<sup>11</sup>, respondents commented on the cost of waste and decommissioning. The response says "both supporters and opponents of the Government's views on waste and decommissioning point out that it will be difficult for private companies to anticipate fully the costs of building, running and eventually decommissioning nuclear power stations unless they have a clear idea of what the costs of dealing with wastes will be." The response goes on to say "there is also some concern expressed about the possibility of private companies being less inclined to shoulder the costs of waste storage and decommissioning once a nuclear power station has reached the end of its profitable life. Some respondents give detailed consideration to arrangements for the proposed decommissioning and waste fund. Their points include the need for legislative obligations to be placed on operators, and mechanisms to protect operators from creditors in the event of bankruptcy. Some respondents would also welcome more clarity over what would happen if the fund is insufficient or in surplus, and over and over who will hold the fund (for example, industry, government or an independent trust)."
29. To help address these concerns and ensure that operators' arrangements for waste and decommissioning costs would be subject to an appropriate level of scrutiny, the Government announced the creation of the Nuclear Liabilities Financing Assurance Board in the Nuclear White Paper 2008.<sup>12</sup>

## Costs and efficiencies

30. The review team considered what potential there was for NLFAB to make cost savings or efficiencies in its work. It found that the Board only met when there was

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<sup>11</sup> "Future of nuclear power: analysis of consultation responses" see page 63

<http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file43206.pdf>

<sup>12</sup> Meeting the Energy Challenge: a nuclear white paper:

[http://webarchive.nationalarchives.gov.uk/20100512172052/http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/energy\\_mix/nuclear/white\\_paper\\_08/white\\_paper\\_08.aspx](http://webarchive.nationalarchives.gov.uk/20100512172052/http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/white_paper_08/white_paper_08.aspx)

a clear business need<sup>13</sup>; that meetings were replaced by teleconferences when appropriate - saving time and costs; and the Board was supported by DECC officials rather than an external secretariat (although this is an area that requires further consideration, see question 12).

31. The review team noted the sharp rise in hours worked by members following the formal submission of the Hinkley Point C FDP and questioned whether there was scope to help manage the time members spent scrutinising the FDP. The review team also asked whether seven continued to be the right number of people to have on the Board. However, as the Board continues to work on its advice for the Secretary of State these are questions for the sponsor team to analyse once the advice is published.
32. The review team noted that the Energy Act 2013 enables DECC to make savings in relation to the FDP by extending DECC's cost recovery powers. In future DECC will be able to recover costs for advice it provides to the operator prior to the submission of the FDP, specifically for the period between a notification by the operator of its intention to submit an FDP and the submission date. On the basis of DECC's recent experience, DECC will require technical, financial and legal support, and engagement with the NLFAB, during the development phase of the FDP, prior to its submission. This is to facilitate and support meaningful engagement between DECC and prospective operators while they are defining their approach to the FDP. In 2011/12 NLFAB's costs were approximately £42,000. Some 50% of these costs were incurred prior to the operator formally submitting its FDP and consequently could not be recovered. In future DECC will be able to recover such costs as long as they relate to work undertaken once the operator has notified DECC of its intention to submit an FDP.

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<sup>13</sup> See Annex D for a list of NLFAB meeting dates between 2009 and 2014

## The Review: Stage One

### Functions of the Body

33. In line with Cabinet Office guidance on undertaking a NDPB triennial review, this section considers the functions and objectives of NLFAB and whether they are still required. It then considers whether NLFAB's status as an advisory NDPB is the best model for the delivery of its functions.
34. NLFAB's primary function is to provide the Secretary of State with independent advice on the suitability of the funding part of the FDP, submitted by prospective operators of new nuclear power stations, as required by the Energy Act 2008. NLFAB will also provide advice to the Secretary of State on the regular review and ongoing scrutiny of the funding arrangements for each new nuclear power station once it is operational.

### Are the functions still required?

35. The review team drew on stakeholder views when considering whether the Board's function, described above, is still required by Government.
36. The review team found that all the main drivers for establishing NLFAB remain fully applicable and relevant. As set out in paragraph 29 above, these centre on delivering Government policy on managing the financing arrangements for waste and decommissioning costs, ensuring that the tax payer and consumers are protected from bearing the burden of such costs and the need to command public confidence that the arrangements being put in place are robust. This assessment was supported by the comments received from respondents who generally agreed on the importance of maintaining the functions performed by NLFAB.
37. Respondents were clear about the importance of the Secretary of State receiving expert advice on the waste and decommissioning financing arrangements. Building and maintaining public trust in the way that decisions on the financing arrangements are made was seen as an essential part of NLFAB's role. Some responses talked about the importance of NLFAB being, and being seen to be, an impartial, independent body with no vested interest in the outcomes of its recommendations. One response described independent scrutiny as being a key pillar of the regime which goes a long way to demonstrating that high level of importance the Government is giving to this issue.
38. Other responses mentioned the complexity of the financing arrangements and the need for experts to provide in depth scrutiny of, and advice on, the suitability of the proposals. Some referred to the Government's commitment to protecting the tax payer and consumers from future costs and NLFAB's role in ensuring the FDP is robust.
39. It is not just the public that requires confidence in the Government's decisions. Prospective operators of new nuclear power stations also need to have trust in the

process in place to advise on the development and completion of their FDP. One response talked about the importance of NLFAB's role in this respect, emphasising the significance of its independence, and the political impartiality, experience and skills of its members.

40. NLFAB's terms of reference include responsibility for providing advice on a FDP on an on-going basis. Although this has not been required to date, in light of the requirements in the Energy Act 2008 and secondary legislation for the operator to review its FDP regularly and provide reports to the Secretary of State, the review team agreed that there was a need for the Secretary of State to have access to independent advice on the operation of an FDP once it had been approved. This was supported by one of the responses which highlighted the necessity of the on-going review function once the FDP is in place.
41. The review team concluded that removing the functions provided by NLFAB would send confusing signals to industry and the public about the Government's commitment to ensuring that the operator will fund the waste and decommissioning costs for nuclear new build. This was supported by a respondent who felt that such a move could leave the Government open to the challenge that arrangements were being made 'behind closed doors' damaging public trust and undermining the process.
42. On the basis of these views, the review team concluded that NLFAB's function does meet its objective of ensuring that the operator makes suitable provision for its waste and decommissioning costs. The objective remains relevant and should be retained, particularly in the light of the renewed impetus given to nuclear new build with the agreement on the key terms of a proposed investment contract for the Hinkley Point C nuclear power station in October 2013. Removing the function could undermine public trust in the Government's ability to protect tax payers and consumers from bearing the costs of waste and decommissioning in the long-run, and could affect the rigour with which future FDPs are scrutinised.

## Delivery Models

43. This section of the report provides a comparative analysis of the potential delivery structures for the functions provided by NLFAB. In considering the full range of organisational structures suggested by the Cabinet Office guidance, it was possible to dismiss several concepts fairly quickly due to their immediate and obvious drawbacks. Each option is considered in turn below.

### Abolish the functions provided by NLFAB

44. This delivery model would see the functions of NLFAB abolished. For the reasons set out in the previous section, the review team believes that NLFAB's functions remain relevant and are therefore still required. Consequently, the review team felt that this was an option that could be quickly dismissed.

### Move out of central government

45. The review team considered whether the functions of NLFAB could be delivered by others such as local government, the voluntary sector or the private sector. In this assessment the review team focused primarily on whether alternative delivery models could provide the expertise and independence which are considered the key benefits of the current model.

#### Local government

46. The FDP is a national framework covering a small number of widely dispersed sites. Asking each local authority with a new nuclear power station within its responsibility to consider a FDP would raise significant issues around expertise and resource availability. Consequently the review team felt that moving NLFAB's functions to local government did not offer a practical alternative to the current model.

#### Private or voluntary sectors

47. The review team's view was that it would be possible in theory for entities in the private or voluntary sectors to assemble the necessary expertise to scrutinise the FDP and therefore undertake NLFAB's functions. However, the team's assessment was that ensuring the advice received by the Secretary of State was, and was seen to be, independent and free from the influence of sectoral and other interests, would be difficult.

48. Furthermore, the review team saw practical difficulties in securing this service from third parties. In this context the review team took account of the findings of public consultations on the role to be played by independent third party verification in the development and review of FDPs.<sup>14</sup> These consultations identified that it might be challenging to identify firms willing to provide this service, as organisations that

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<sup>14</sup> This was most recently discussed in the Government Response to the Consultation on the Amendment to the Decommissioning and Waste Handling (Finance and Fees) Regulations 2011, published in February 2013, paragraphs 2.8 – 2.11.

might offer verification services would also be in the market to offer technical advice to operators, which would be seen as the more lucrative role. Also, the willingness of companies to act as verifiers, and the cost of the service, would be very much affected by the nature of the test they were expected to apply.

49. The review team's view was that these challenges would also affect the ability and willingness of private or voluntary sector organisations to provide independent advice to the Secretary of State with the required rigour and form.
50. Moreover, the review team also felt it was unlikely that the private or voluntary sectors could offer much in the way of costs savings and indeed it was likely that this option would be more costly than the current model.
51. The review team also considered whether the functions could be provided by engaging directly with users, stakeholders, sectors and communities. Independence was the main concern once again as it was difficult to see how it could be established and maintained among disparate groups of interested parties. Expertise could in theory be provided in this way, as such groups are likely to hold a good degree of knowledge and experience. An additional consideration was what method and criteria the sponsor team would use to identify which groups to consult. The review team felt that undertaking a public consultation on the FDP would be a fairer way to engage with these and all interested groups and this option is covered below.
52. The review team concluded that although NLFAB's functions could in theory be undertaken by the private or voluntary sectors, it found no evidence to support either of these options having any advantages over the current arrangements. On the contrary, it felt that the issues around independence and the likely loss of public trust in the FDP financing arrangements – given that any such changes would not be undertaken before NLFAB's advice was published when its public profile would be significantly higher than it is currently - were major disincentives for not transferring the functions to either of these sectors or, as discussed above, to local authorities.

### Bringing the functions in-house

53. This delivery model would mean the functions currently performed by NLFAB would be brought into DECC. This could be achieved in a number of ways and the review team considered the following:
  - DECC could publish the FDP as a public consultation. DECC would be able to seek views from parties it felt had suitable expertise to make a substantive contribution while considering all other responses.
  - DECC could establish a specific departmental committee of expert members to scrutinise the FDP.
  - DECC could employ a range of experts on a part time basis.
54. The review team felt that each of the above options would provide some level of expertise, although it was more likely to be higher in the case of an expert

committee or range of experts, where DECC would be responsible for choosing the membership and scrutiny of the FDP could take as long as necessary. A public consultation would be expected to elicit views from a larger number and more diverse set of people than either of the other two options although the review team was concerned about the depth and consistency of scrutiny that was likely to be produced by interested parties in response to a consultation.

55. However, the key concern centres on independence and impartiality as none of the options would be perceived to be either independent or impartial. It would be difficult for DECC to assess the impartiality of responses received on the public consultation. In the case of an expert committee and a range of experts employed by DECC, both options would be perceived to be too close to government to be independent whatever levels of protection were put in place.
56. A final option would be for the FDP to be considered by DECC officials on an ad hoc basis with no formal scrutiny structure in place. The review team did not feel that this approach would provide the appropriate level of expertise or independence required to provide advice on the FDP. This was supported by a respondent who said ad hoc arrangements would not deliver the depth of scrutiny and robust examination required by the complexity of the FDP.
57. For the reasons cited above, the review team did not feel that moving NLFAB's functions in-house had any benefits that merited further consideration.

### Merge with another body

58. This option involves looking at other areas of government that deliver a similar or complimentary function to NLFAB. The criteria used by the review team to assess whether a body could undertake NLFAB's functions were: expertise, independence and capacity. The team looked at those arm's length bodies most likely to offer strong links with NLFAB, most of which work on nuclear or nuclear power related issues. The review team looked at the following bodies:
  - **Committee on Radioactive Waste Management (CoRWM):** this is an advisory NDPB that provides independent scrutiny and advice to the UK Government and Devolved Administrations on issues related to the management of radioactive waste in the UK. It is the vehicle for delivering transparent and open scrutiny of Government on the storage and disposal of radioactive waste. Like NLFAB, CoRWM is an advisory NDPB with a similar structure and level of independence. However, it has a specific technical remit, very different to NLFAB's financial remit, with a small membership appointed to fulfill that remit and a full work programme. It was not clear whether CoRWM members had the expertise to assess a FDP although that could be addressed by, for instance, extending CoRWM's membership to include NLFAB members or tailoring the membership requirements. The Terms of Reference (vires) would also need to be revised which would require approval by sponsor Departments (which in addition to

DECC includes Devolved Administrations). Given that CoRWM is an independent, expert advisory body in a related field, the review team felt that NLFAB's functions could in theory be undertaken by CoRWM, but that this would require significant changes to CoRWM's remit and membership to ensure it had the expertise and capacity required.

- **Nuclear Liabilities Fund (NLF):** is a public corporation created to provide arrangements for funding certain long-term costs of decommissioning some nuclear power stations. By coincidence, the NLF Chair also chairs NLFAB although the incumbent will stand down as NLF Chair in summer 2014. The two bodies also share a common member. NLF has the benefit of independence as well as an expert membership that may reflect some of the specialisms held by NLFAB members. However, NLF and NLFAB have different purposes and functions. NLF's purposes give it similarities to a pension fund rather than an independent advisory body. NLF is not an advisory NPDB, it is a Scottish Public Trust set up with a specific role and purpose. The body is also very small, with just five director trustees and a full work programme which raises questions about its capacity to take on further responsibilities outside its immediate remit. Given the similarities between NLF's remit and that of NLFAB, the review team believed that it could be possible for NLF to undertake NLFAB's functions, but this would require significant changes to NLF's structure and vires.
- **Nuclear Decommissioning Authority (NDA):** is an executive NDPB created to deliver the decommissioning and clean-up of the UK's civil nuclear legacy in a safe and cost-effective manner, and where possible to accelerate programmes of work that reduce hazard. NDA employs some 200 people and its board has a mix of executive and non-executive directors. The review team's view is that NDA has the expertise to scrutinise the FDP, as its role as an expert technical advisor to DECC and NLFAB and, given its size, it has the potential capacity to take on NLFAB's functions. However as an Executive Agency of DECC with a specific remit laid down in statute, the review team was concerned that it would be difficult to demonstrate that the NDA was independent of the Secretary of State in undertaking NLFAB's functions.
- **Office for Nuclear Regulation (ONR):** is responsible for civil nuclear safety and security regulation across the UK. ONR will start to operate as a public corporation in April 2014 which will increase its independence from Government. ONR's primary focus is on safety so to be able to undertake NLFAB's functions might require an extension of its vires and recruitment of specialist staff to complete the work. From April 2014 ONR will have a Board of up to 9 executive and non-executive directors. It has some 400 staff so it has the potential capacity to undertake NLFAB's functions although it already has a very full work programme. The review team felt that ONR had the potential to undertake NLFAB's functions although its remit may need to be extended.

59. The Review team considered the Civil Nuclear Police Authority (CNPA), an executive NDPB with a remit to secure the maintenance of the Civil Nuclear Constabulary, but very quickly discounted it as the remit of the two organisations is too different.
60. Stakeholders who commented on the possibility of merging NLFAB with another body were opposed to the idea overall, irrespective of which body could undertake NLFAB's functions. This was on the grounds that NLFAB needs to stand apart from other organisations in the landscape of arm's length bodies if it is to provide independent scrutiny and advice on the suitability of FDPs. They commented that other bodies do not offer appropriate independence or distance from government and that informal or ad hoc arrangements would undermine NLFAB's independence.
61. In conclusion, the review team felt that CoRWM, NLF, NDA and ONR each had the potential to undertake NLFAB's functions subject to the appropriate arrangements being made (such as vires being extended). However, there was no clear rationale for transferring the functions to another arm's length body. The review team did not come across any evidence to suggest that the existing arrangements did not work well. Further, a transfer would incur costs and resource without bringing about provable benefits and may even result in dis-benefits; it would be unlikely to lead to cost savings as NLFAB's budget only covers members' expenses and fees and does not rely on the type of body providing the function; and without a clear reason for taking such action, it has the potential to erode public trust in the Government's commitment to protecting the tax payer from future costs. A transfer could also have a significant impact on the body chosen to undertake the functions, particularly in the case of the smaller bodies - such as NLF -and the body's vires needed to be amended.

### Delivery via a new Executive Agency

62. The review team did not feel that this was a credible option. The functions of NLFAB are not executive in nature, they are advisory. Unlike an executive agency, the only service that NLFAB delivers is scrutiny and advice. NLFAB's small size and budget do not merit the creation of an executive framework to manage its administration.

### Continued delivery by an NDPB

63. This option would see NLFAB continuing to perform its scrutiny and advice functions as an advisory NDPB. As an NDPB, NLFAB provides advice that is independent of Government, the nuclear industry and regulators. It is this independence and lack of bias which underpins the Board's credibility in providing advice to the Secretary of State. This option is considered at greater length under the Three Tests below.

## The Three Tests

64. The Cabinet Office procedure for triennial reviews requires that when an NDPB is considered as a delivery vehicle for the function discussed in the first part of Stage 1, the function must pass at least one of the following Three Tests:

- Is this a technical function (which needs external expertise to deliver)?
- Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
- Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

### Is the body needed to perform a technical function?

65. Yes. The financing part of the FDP is long, complex and highly technical. Expert advice on the suitability of the proposals is key to enabling the Secretary of State to make an informed decision on the prudence of the FDP and whether or not to accept it, with or without modifications. NLFAB can draw upon external advisers for additional support on legal, financial or technical matters, but concerns about independence mean that it would not be appropriate, or cost effective, for such advisers to inform the Secretary of State directly.

### Does the existing body need to be politically impartial?

66. Yes. NLFAB's credibility and authority are in large part derived from the fact that it is independent and impartial and is perceived to be so. Such credibility would be critically undermined if NLFAB was seen to have any form of political bias.

### Does the existing body need to act independently to establish facts?

67. Yes. This is NLFAB's principal reason for existence. As mentioned above, technical, legal and financial advice can be sourced externally but it is not sufficient to meet the public need for advice that is visibly independent from Government. Any suggestion of partiality or bias would undermine NLFAB's advice and the Secretary of State's decision on the FDP which need to command public trust. Any departure from the provision of independent advice would raise wider questions about the Government's commitment to ensuring that FDP is sufficiently robust to protect the tax payer and consumers from bearing future nuclear new build waste and decommissioning costs.

## Conclusion

68. Having evaluated the delivery models the review team concluded that NLFAB's functions could in theory be undertaken by the private or voluntary sectors, or by several existing arm's length bodies, assuming the appropriate arrangements were made. However, the review team did not find any evidence of issues related to NLFAB's current form or any proof that altering NLFAB's status would result in benefits such as cost or resource savings. On the contrary, the team felt that there were some significant dis-benefits to transferring NLFAB's function. Key among

these was the difficulty of ensuring advice provided by the private or voluntary sectors was, and was seen to be, independent which undermines one of the main reasons for the function's existence. Transferring NLFAB's functions to the arm's length bodies identified by the review team as having the potential to take-on the functions could be disruptive, particularly for the smaller bodies; time consuming especially if vires needed to be changed; and costly due to the staff resource required to make the transfer and support the function. The review team felt that the body was operating effectively as an advisory NDPB and did not find any issues relating to its form. It concluded therefore that NLFAB should remain an advisory NDPB.

## The Review: Stage Two

Having concluded that NLFAB should remain an advisory NDPB in Stage 1 of the review, Stage 2 looks at the arrangements in place to ensure that NLFAB is operating in line with recognised principles of good corporate governance on which the questions below are based. The Cabinet Office defines corporate governance as the way in which organisations are directed, controlled and led concluding that ultimately, it defines where accountability lies.<sup>15</sup>

In this respect the review team has assessed the controls, processes and safeguards in place for NLFAB against the principles set out in the text below. In keeping with the “comply or explain” approach to corporate governance set out by the Cabinet Office, the review team has sought to identify the areas of non-compliance and consider whether the alternative approach adopted is justified or whether steps should be taken to address the issue.

### Accountability

#### Principle

The Minister is ultimately accountable to Parliament and the public for the overall performance, and continued existence, of the public body.

#### **1. Does the Minister and sponsoring department exercise appropriate scrutiny and oversight of NLFAB, including oversight of any public monies spent by, or on behalf of, NLFAB?**

Yes. The sponsor team meets as regularly as business needs require.<sup>16</sup> The number of meetings required rose sharply once the Hinkley Point C FDP was formally submitted in March 2012 from 6 meetings in 2011/12 to 17 meetings in 2012/13. The meetings focus on matters relevant to NLFAB’s work including key issues for the FDP and the sponsor team is present for large parts of each meeting. However, it would not be appropriate for DECC to scrutinise and provide oversight on the preparation of NLFAB’s advice to the Secretary of State which must be independent as set out in the NLFAB terms of reference.

In terms of monies spent, the sponsor team looks closely at the expense and honararium claims submitted by NLFAB members. The secretariat has explained the arrangements for making claims and receiving payments to members; the process is also available on the claim form itself; and it is included in the latest version of the Letter of Appointment which will apply to all members when they are next appointed or reappointed. All expense claims must be fully justified and documented before payment will be approved. The review team found there was some disparity in the regularity that claims were made as well as some issues around the payment of claims. The review team concluded that the sponsor team

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<sup>15</sup> See “Advisory NDPBs: Corporate Governance Arrangements”  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/80073/Advisory\\_NDPBs\\_corporate\\_governance\\_arrangements\\_Dec12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80073/Advisory_NDPBs_corporate_governance_arrangements_Dec12.pdf)

<sup>16</sup> See Annex D for a list of meeting dates

should work with members to ensure claims for fees and expenses are made in line with cost recovery guidance<sup>17</sup> (i.e. at least every three month) and to ensure payments are made promptly and accurately.

### **Recommendation**

- **Sponsor team to work with NLFAB members to ensure expense / fees claims are made in line with cost recovery guidance (i.e. at least every three months) and to process payments promptly and accurately.**

### **2. Are appointments to NLFAB made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments?**

Yes. There are no specific statutory requirements for appointing members to NLFAB. The NLFAB Chair was appointed in November 2008 as part of BERR<sup>18</sup> and then DECC's work to set-up the Board. Six further members were appointed in April 2009. All the appointments were made for an initial term of three years. The appointment of all the NLFAB members was made in compliance with the Commissioner for Public Appointments (OCPA) Code of Practice on Ministerial Appointments to Public Bodies, published in 2005.<sup>19</sup> In 2011 the NLFAB Chair was reappointed for a term of two years in compliance with the terms set out in the OCPA Code 2009.<sup>20</sup> The most recent version of the OCPA Code of Practice published in 2012<sup>21</sup> makes Departments responsible for the detailed elements of the appointment process. DECC has updated its Letter of Appointment template for NDPBs to reflect the requirements of the latest Code of Practice. The NLFAB Chair was reappointed on this basis in November 2013 for a further year.

### **3. Does the Minister appoint the NLFAB Chair and its members? Can he remove individuals whose performance or conduct is unsatisfactory?**

Yes. Members of advisory NDPBs are normally appointed by ministers; NLFAB members are appointed by the Secretary of State for Energy and Climate Change. DECC's Letter of Appointment template for NDPBs sets out the principal terms and conditions of appointment, including those under which appointments can be terminated by the Secretary of State. Paragraph 6b says: "The Secretary of State may terminate your appointment immediately, by giving notice in writing, if you are guilty of any conduct that

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<sup>17</sup> "Funded Decommissioning Programme Cost Recovery Scheme: guidance for prospective nuclear operators": <https://www.gov.uk/government/publications/funded-decommissioning-programme-cost-recovery-scheme-guidance-for-prospective-nuclear-operators>

<sup>18</sup> BERR – the Department of Business, Enterprise and Regulatory Reform, now the Department of Business, Innovation and Skills.

<sup>19</sup> OCPA Code of Practice 2005: <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/Code-of-Practice-for-Ministerial-Appointments-to-Public-Bodies.pdf>

<sup>20</sup> OCPA Code of Practice 2009: <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/New-Code-of-Practice-for-Ministerial-Appointments-to-Public-Bodies-August-2009.pdf>

<sup>21</sup> OCPA Code of Practice 2012: <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/Code-of-Practice-2012.pdf>

means that you are unsuitable to continue to hold this appointment.” The Letter of Appointment must be signed by the appointee as well as by an authorised representative from DECC.

#### **4. Does the Minister meet the Chair on a regular basis?**

No. Ministers meet with NLFAB members as business needs require but, to date, it has not been necessary for such meetings to take place on a regular basis. For example, the NLFAB Chair had an introductory meeting with the Secretary of State in 2011 to discuss the Board’s work. The Secretary of State met NLFAB in October 2013 to discuss their draft advice on NNB’s FDP for the Hinkley Point C power station. The review team felt that the nature of NLFAB’s work did not require regular meetings with Ministers and the current arrangements were appropriate for NLFAB’s work.

#### **5. Is DECC required to inform Parliament and the public of NLFAB’s work through publication of an annual report (or equivalent publication)?**

Yes, although there is scope for improving compliance. The NLFAB terms of reference say “The Department of Energy and Climate Change will include a summary of the work of the Board within its annual report”. The review team found that this had not been done to date and recommends that it is followed-up by the sponsor team. Separately, as a matter of good practice, a report of NLFAB’s activities should be issued on an annual basis.

#### **Recommendations**

- **Sponsor team to:**
  - **ensure that NLFAB’s work is covered in DECC’s Annual Report and Accounts; and**
  - **work with NLFAB to decide how best to report on the body’s activities on an annual basis.**

#### **6. Is NLFAB compliant with Data Protection legislation?**

Yes, NLFAB’s records are held in DECC’s information management systems and are subject to the same data protection legislation as DECC. No issues in this area have arisen to date.

#### **7. Is NLFAB subject to the Public Records Acts 1958 and 1967?**

Yes, NLFAB is subject to public records legislation in the same way as DECC.

### **Role of DECC as lead sponsor Department**

#### **Principles**

The Departmental board ensures that there are appropriate governance arrangements in place with the public body. There is a sponsor team within the Department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.

#### **8. Does the DECC Board’s regular agenda include scrutiny of NLFAB’s performance?**

No, however the review team considers that this would be disproportionate as NLFAB is a small advisory NDPB with a budget in 2013/14 of £48,000. The DECC Board can scrutinise the performance of NLFAB whenever it feels it is necessary. Day to day oversight of NLFAB’s performance is undertaken by the DECC sponsor team.

**9. Are the NLFAB terms of reference accessible and understood by DECC and by all board members? Are they regularly reviewed and updated?**

Yes. NLFAB terms of reference are reviewed as part of the appointment or reappointment of NLFAB members, or as required reflecting business needs or changes to departmental priorities. Most responses to this question said the terms of reference were accessible and understood although one observed that the terms of reference were not available on the NLFAB website. The NLFAB terms of reference were last reviewed by the sponsor team in November 2011 in preparation for the NLFAB members (except for the Chair) being reappointed in March 2012. A copy of the terms of reference is sent to each member when they are appointed or reappointed. The review team concluded that the terms of reference should be updated and published.

**Recommendations**

- **Sponsor team to review and publish NLFAB's terms of reference.**

**10. Is there a dedicated sponsor team within DECC with a clearly defined role?**

Yes. DECC is the sponsor department for NLFAB and members of the waste and decommissioning team within DECC's Office for Nuclear Development (OND) are the lead sponsor officials. The responsibilities of all DECC sponsor teams are clearly set out on the NDPB pages of the DECC intranet and they are also reflected in the objectives of staff fulfilling the sponsor function. All responses to this question agreed that the DECC sponsor team had a clearly defined role although one commented that the role could be explained more clearly in the NLFAB web pages.

**11. Is there regular and on-going dialogue between DECC and NLFAB? How could it be improved?**

Yes. The Board meets as regularly as business needs demand. At least one session in each meeting is held with officials from the DECC sponsor team. The review team observed that the relationship between NLFAB and the sponsor team was constructive. Responses received to this question supported this view and were positive about the dialogue between DECC and NLFAB.

**12. Is NLFAB appropriately resourced to fulfill its function?**

Yes, resource is sufficient although there are a couple of areas where the sponsor team could work with NLFAB to make improvements – on secretariat support and the sharing of expert advisors.

- NLFAB members expressed some dissatisfaction with the quality of secretariat support they receive due largely to staff turnover. Several responses expressed a wish for an independent secretariat, rather than one provided by DECC officials. To date the NLFAB secretariat post has been staffed by a DECC official based outside the sponsor team, thus the secretariat is independent of the sponsor team. However, other bodies, such as NLF (discussed under paragraph 58 above), have their own secretariat independent of any government department. Frequent staff changes are not uncommon in the civil service, but the review team concluded that the sponsor

team should consider how the support provided to the Board could be improved, including looking again at whether it would be feasible to provide NLFAB with an independent secretariat, taking account of the associated costs and benefits.

- ii. A couple of respondents expressed concerns about NLFAB and the DECC sponsor team having common expert advisers. When the current adviser teams were appointed it was considered that NLFAB could not, as an advisory NDPB, contract its own advisers directly. It was decided that the most efficient and cost effective approach would be for the sponsor team and NLFAB to have access to a common set of expert advisers. The terms of appointment of the advisers made clear that they would act also as advisers to NLFAB, which could seek advice from them that was separate to that provided to the sponsor team. However, the respondents commented that there had been difficulties in operating these arrangements in practice and suggested that the issue of whether NLFAB should have separate advisers should be looked at again. The review team notes the substantial cost implications that would arise from appointing another set of advisers, but recommends that the sponsor team should review the procedures and protocols governing the provision of advice to NLFAB by the shared adviser teams to address the issues identified in this review.

### **Recommendations**

- **Sponsor team to:**
  - **assess how secretariat support to NLFAB can be improved; and**
  - **review arrangements for the appointment and management of external advisers.**

### **13. Is there an annual evaluation of the performance of NLFAB and of the Chair?**

Yes, the NLFAB Chair carries out annual performance appraisals of NLFAB members and reports on them to DECC. No issues have arisen with regard to members' appraisals to date. DECC undertakes an annual performance appraisal of the NLFAB Chair which takes account of 360 degree feedback from sources including NLFAB members and the sponsor team. These activities are in line with the Cabinet Office guidance for Advisory Public Bodies.<sup>22</sup>

### **Role of the Chair**

#### **Principle**

The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.

### **14. Is NLFAB led by a non-executive Chair?**

Yes, the NLFAB Chair is a non-executive as are all the NLFAB members. NLFAB is an advisory NDPB and does not have any executive functions.

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<sup>22</sup> Advisory NDPBs: Corporate Governance Arrangements:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/80073/Advisory\\_NDPBs\\_corporate\\_governance\\_arrangements\\_Dec12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80073/Advisory_NDPBs_corporate_governance_arrangements_Dec12.pdf)

**15. Is there a formal, rigorous and transparent process for the appointment of the Chair which is compliant with the Code of Practice issued by the Commissioner for Public Appointments?**

Yes. The NLFAB Chair was appointed in 2008 in compliance with the detailed guidance set out in the OCPA Code of Practice on Ministerial Appointments to Public Bodies. An independent assessor representing OCPA was a member of the NLFAB Chair appointment panel. The assessor confirmed that the Department had complied with the requirements of the OCPA Code during the selection and appointment process. The Chair was reappointed under the OCPA Code 2009 for a term of two years in 2011 and reappointed for an additional term of one year in summer 2013 under the OCPA Code 2012. As part of the reappointment process in 2013, the sponsor team provided the Chair with a range of documents including the Letter of Appointment, the NLFAB terms of reference and a list of the 'Seven principles of public life': selflessness; integrity; objectivity; accountability; openness; honesty; and leadership.

**16. Does the Chair have clearly defined role in the appointment of NLFAB members?**

Yes. The Chair was a member of the selection panel that appointed the NLFAB members in 2009. The Chair's annual performance appraisals of NLFAB members were one part of the consideration process for reappointing members to the Board in 2012.

**17. Are the duties, role and responsibilities, terms of office and remuneration of the Chair set out clearly and formally defined in writing?**

Yes. The Chair's duties, roles, responsibilities, terms of office and remuneration rate are set out in the Letter of Appointment which is sent to the Chair as part of the appointment and reappointment process.

**18. Are the terms and conditions in line with Cabinet Office guidance and with any statutory requirements?**

Yes. The terms and conditions of employment for NLFAB members are set out in DECC's Letter of Appointment template for NDPBs. This document has been updated to reflect the principles set out in the OCPA Code 2012.

## **Role of NLFAB Members**

### Principle

Board members should provide independent, expert advice.

**19. Is there a formal, rigorous and transparent process for the appointment of NLFAB members which is compliant with the Code of Practice issued by the Commissioner for Public Appointments?**

Yes. NLFAB members (except for the Chair – see Q15) were appointed in 2009 in compliance with the OCPA Code of Practice 2009. An independent assessor representing OCPA was a member of the selection panel. He confirmed that the procedure followed the OCPA requirements and issued a validation certificate to that effect. NLFAB members were

reappointed in 2012 for an additional term of three years in line with the OCPA Code of Practice 2012.

**20. Are members properly independent of the Department and of any vested interest (unless serving in an ex-officio or representative capacity)?**

Yes. DECC's Letter of Appointment for NDPBs requires members to declare to the secretariat any personal or business interest which may, or may be perceived to, influence their judgment in the discharge of their obligations under their contract. DECC keeps a record of members' business interests which is updated regularly. The review team noted that no issues have arisen to date.

**21. Are members drawn from a wide range of diverse backgrounds?**

Yes. In line with the OCPA Code the appointment process for NLFAB members seeks to draw applicants from a wide range of diverse backgrounds. The scrutiny of the Independent Public Appointment Assessors ensures that the role specification, selection criteria and advertising do not include barriers to deter groups of applicants. Monitoring data for the process is collected and provided to OCPA when requested. Information about the NLFAB members is available on the NLFAB webpages.<sup>23</sup>

**22. Does NLFAB as a whole have an appropriate balance of skills, experience, independence and knowledge?**

Yes. When NLFAB was being set-up DECC identified six specialisms that it wanted the Board to cover and recruited members to match these requirements. As a result members bring expertise from a range of relevant fields including specialist legal, economic, actuarial, fund management, environmental and nuclear engineering. The review team recommends that when the current Board members' terms finish in 2015, it would be timely for the sponsor team to review the specialisms, identified in 2008 in light of the experience of the Board's scrutiny of the first FDP, to ensure NLFAB continues to have the right balance of skills and experience for the scrutiny of future FDPs.

**Recommendation**

- **Sponsor team to assess the skills and expertise required for future NLFAB members.**

**23. Are the duties, role and responsibilities, terms of office and remuneration of members set out clearly and formally defined in writing?**

Yes, these are set out in the Letter of Appointment signed by each member upon their appointment and reappointment. The responsibilities of the Board are also set out in the terms of reference. In addition, information on remuneration is included on the members'

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<sup>23</sup> Information about NLFAB members can be found on the NLFAB webpages:  
<https://www.gov.uk/government/organisations/nuclear-liabilities-financing-assurance-board/about/membership#members>

page of the NLFAB website (see link under Q22) and in the press releases announcing members' appointments and reappointments.<sup>24</sup>

**24. Are the terms and conditions in line with Cabinet Office guidance and with any statutory requirements?**

Yes. The terms and conditions set out in the Letter of Appointment are in line with the Cabinet Office guidance on Making and Managing Public Appointments.<sup>25</sup> The guidance puts a strong emphasis on compliance with the OCPA Code of Practice. DECC's Letter of Appointment template for NDPBs was updated to take account of the principles set out in the OCPA Code 2012. There are no statutory requirements for NLFAB terms and conditions.

**25. Do members allocate sufficient time to NLFAB to discharge their responsibilities effectively?**

Yes. Members are expected to commit at least 12 days a year to NLFAB. The review team found that each member had worked considerably more than 12 days for the year 2012/13 and they were on course to work significantly more than 12 days in 2013/14. The time members spent on NLFAB work was driven by the time needed to assess the Hinkley Point C FDP after it was formally submitted to DECC in March 2012. The sponsor team reported that in previous years members' commitment was in the region of twelve days. The 12 day recommended commitment was set by DECC before there was any practical experience of the work required to scrutinise an FDP. The review team concluded that the sponsor team should consider whether 12 days remains a suitable minimum and whether there is any scope to manage large increases in work more effectively.

**26. Is there a proper induction process for new members that is led by the Chair?**

Yes. When NLFAB members were appointed in 2009 the sponsor team worked with the Chair to ensure that members had a thorough understanding of FDP policy and the new nuclear agenda, as well as DECC's wider work and responsibilities. As no new members have joined NLFAB since it was created in 2009, the sponsor team must ensure that future members undergo a thorough induction.

**Recommendation**

- **Sponsor team to consider induction requirements for new members.**

**27. Are there regular reviews by the Chair of individual members' training and development needs?**

No. Training and development is not specifically considered as part of the annual review of each NLFAB member. Members review their own training and development needs on a

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<sup>24</sup> Press release on the launch of NLFAB, 31 March 2009:

<http://webarchive.nationalarchives.gov.uk/20090224120532/http://decc.gov.uk/en/content/cms/news/pn039/pn039.aspx>

Announcement of the reappointment of NLFAB members, 1 March 2012:

<https://www.gov.uk/government/news/reappointment-of-the-members-of-the-nuclear-liabilities-financing-assurance-board>

<sup>25</sup> Making and Managing Public Appointments: [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/public\\_appt\\_guide-pdf\\_tcm6-3392.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/public_appt_guide-pdf_tcm6-3392.pdf)

continuous basis. Learning takes place in the course of members' work for NLFAB and members are appointed on the basis of their expertise. Respondents did not suggest that this was an issue.

**Do all members ensure that high standards of corporate governance are observed at all times – including ensuring that NLFAB operates in an open, accountable and responsive way?**

Yes. The Letter of Appointment and NLFAB Code of Practice set out how members should conduct themselves. No issues have arisen to date in this area.

## Communications

### Principle

The Public Body should be open, transparent, accountable and responsive

**28. Does NLFAB operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000?**

Yes. However, as a consequence of this review it was found that NLFAB is not formally listed as a public authority subject to the FOI Act 2000 (2000 Act) nor has it been designated as a public authority by an order made under section 5 of the 2000 Act. The review team believes that this was an oversight and the sponsor team is taking action to rectify the situation. Whenever DECC has received FOI requests that involve NLFAB the sponsor team has treated them as if NLFAB was subject to the 2000 Act.

**29. Does NLFAB make an explicit commitment to openness in all its activities?**

Yes. The NLFAB terms of reference are clear that the advice NLFAB provides to the Secretary of State both for the funding part of the FDP and its on-going suitability will, subject to any commercial or confidentiality considerations, be made public. Minutes of NLFAB meetings are published on the DECC website to reflect the substance of discussions.<sup>26</sup>

**30. Where appropriate, has NLFAB established clear and effective channels of communication with key stakeholders?**

Yes. When NLFAB members were seeking to understand the landscape NLFAB was operating in during the early days of its existence, they met with a range of stakeholders including energy companies, NGOs and regulators. Since that time members have limited their engagement to energy companies who have, or intend to, submit a FDP.

**31. Does NLFAB engage and consult with the public on issues of real public interest or concern, including for example, holding open meetings or annual public meetings?**

No. NLFAB has not engaged with the public due to the commercially confidential nature of its work. As referred to above, NLFAB has limited its focus to energy companies that have, or intend to, submit a FDP. The review team felt that this approach was entirely

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<sup>26</sup>NLFAB meeting minutes:

<https://www.gov.uk/government/publications/nuclear-liabilities-financing-assurance-board-meeting-minutes-17-september-2012>

appropriate for the current time, but was of the view that NLFAB and the sponsor team should consider what stakeholder engagement should be undertaken once NLFAB's advice is published.

#### **Recommendation**

- **Sponsor team and NLFAB to consider together what stakeholder engagement should be undertaken**

#### **32. Are the results of reviews or inquiries published?**

Yes, NLFAB's advice on the suitability of the FDP will be published once the Secretary of State has made his decision on the FDP.

#### **33. Does NLFAB proactively publish agendas and minutes of its meetings?**

Yes. NLFAB meeting minutes are available on its webpages, see link under question 31.

#### **34. Are there robust and effective systems in place to ensure that NLFAB is not, and is not perceived to be, engaging in political lobbying?**

Yes. During pre-election periods NLFAB, together with all DECC NDPBs, is issued with Cabinet Office guidance on how to avoid political impact in its operations and is expected to comply. Similarly, NLFAB is expected to adhere to Cabinet Office guidance regarding attendance at Party Conferences (see response to question 37 below). All responses to this question agreed that there were robust arrangements in place to prevent political lobbying.

#### **35. Are there restrictions on members attending Party Conference in a professional capacity?**

Yes. NLFAB, in line with all NDPBs, must abide by Cabinet Office rules on attendance at Party Conferences.<sup>27</sup> The rules make clear that it should be exceptional for board members or staff of NDPBs to attend Party Conferences in an official capacity. Any requests to attend must be approved by both sponsoring department and the Cabinet Office. If members attend in a private capacity they should comply with requirements on political activity set out in the Code of Conduct.

### **Conduct of behaviour**

#### **Principle**

Board members should work to the highest personal and professional standards. They should promote the values of the public body and of good governance through their conduct and behaviour.

#### **36. Is there a Code of Conduct setting out the standards of personal and professional behaviour expected of all members and which follows the Cabinet Office Code?**

Yes. NLFAB has a Code of Practice based on the Cabinet Office guidance for NDPBs, and includes other provisions relevant to the remit and work of NLFAB. The Code of Practice has

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<sup>27</sup> Rules on lobbying for non-departmental public bodies:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62130/ndpbs-lobbying.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62130/ndpbs-lobbying.pdf)

not been reviewed for some time and the review team felt that it could usefully be updated by the sponsor team and published.

**Recommendation**

- **Sponsor team to update and publish the NLFAB Code of Practice.**

**37. Are all members aware of the Code of Conduct and is it part of the terms and conditions of appointment?**

Yes. Respondents to this question confirmed that they were aware of the Code which the sponsor team had provided to them at the time of their appointments and reappointments. The NLFAB Letter of Appointment includes the NLFAB terms of reference, a link to the OCPA Code of Practice and the 'Seven Principles of Public Life' produced by the Committee on Standards in Public Life.

**38. Are there clear rules in place for managing conflicts of interest?**

Yes. The NLFAB Letter of Appointment sets out the arrangements for managing conflicts of interest. Members must declare to the NLFAB secretariat any personal or business interest which may, or may be perceived to, influence their judgment in performing their functions. They must inform the secretariat and the Board in advance of any new appointments that may impact on their NLFAB roles. They must withdraw from any discussions where they could have a conflict of interest.

**39. Is there a publicly available Register of Interests for NLFAB members that is regularly updated?**

Yes, the NLFAB secretariat keeps a Register of Interests for NLFAB members that is updated when new information is received.

**40. Are there clear and published rules in place governing the claiming of expenses?**

Yes. The current version of the Letter of Appointment sets out the rules on claiming expenses. There are instructions on the expenses claim form itself and the NLFAB secretariat reminds members about when claims should be submitted and the time it takes for the claims to be processed.

**Recommendation**

- **Sponsor team to work with NLFAB members to ensure expense / fees claims are made in line with cost recovery guidance (i.e. at least every three months) and payments are processed promptly and accurately.**

**41. Are there effective systems in place to ensure compliance with these rules?**

Yes. All expense claims are submitted to the NLFAB secretariat who checks each claim to ensure it is correct before it is signed-off. The claim form plus supporting evidence is sent to DECC's Shared Services Directorate where further checks are made before the claim is paid.

**42. Are there clear rules and guidelines in place on political activity for members?**

Yes. During pre-election periods including referenda, as with all DECC NDPBs, NLFAB members are issued with Cabinet Office guidance, with which it is expected to comply, on

how to avoid political impact in its operations. Similarly, NLFAB receives and is expected to adhere to Cabinet Office guidance in respect of attendance at party conferences.

**43. Are there effective systems in place to ensure compliance with any restrictions?**

Yes. The secretariat provides NLFAB members with Cabinet Office guidance on political activity and emphasising the need for compliance.

**44. Are there rules in place for members on the acceptance of appointments or employment after resignation or retirement?**

Yes. There are rules for NDPB staff accepting business appointments after resignation or retirement in relation to the functions of the NDPB concerned and any potential for conflict of interest which may give rise to public concern. This situation has not yet arisen for NLFAB members. When it does, the secretariat will ensure NLFAB members understand the need to comply with the rules. These are set out in Annexes A and B of section 4.3 of the Civil Service Management Code.<sup>28</sup> The review team concluded that the sponsor team must put knowledge management and knowledge transfer measures in place to preserve the corporate memory and enable future work to benefit from current experience.

**Recommendation**

- **Sponsor team to:**
  - **ensure that members understand the need to comply with the rules on future appointments when they retire or resign from the Board; and**
  - **prepare appropriate knowledge management and transfer measures to ensure experience is retained when members leave.**

**Conclusions**

Overall the review team felt that NLFAB is compliant with the recognised principles of good corporate governance. However, there are a number of ways that certain aspects can be improved by the sponsor team. Dissatisfaction with secretariat support was the issue that stood out most in Stage 2 of the review due to a relatively high level of staff turnover in recent years. Staff changes are difficult to avoid, but the sponsor team should work constructively with NLFAB to consider how best to make improvements.

There have not been any new appointments to NLFAB since the Board was created so the review team was unable to observe how the procedure for making such changes had been handled. It is likely that some membership changes will take place when most members finish their current term in February 2015. It will be particularly important for the sponsor team to follow the corporate governance principles closely when current members leave and new ones join.

NLFAB's advice to the Secretary of State will be published after this review has been completed. Once the advice becomes public awareness of NLFAB and its work will rise

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<sup>28</sup> <http://www.civilservice.gov.uk/about/resources/civil-service-management-code>

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significantly. The sponsor team will need to work closely with NLFAB members to ensure NLFAB is open and responsive to the public's interest in its work. The sponsor team should also undertake a thorough lessons learned exercise to ensure NLFAB utilises the experience of scrutinising the first FDP to benefit its work on future FDPs.

**Nuclear Liabilities Financing Assurance Board Triennial Review**

**Terms of Reference**

The purpose of the Nuclear Liabilities Financing Assurance Board (NLFAB) triennial review is to:

- to provide a robust challenge to the continuing need for NLFAB with regard to both its functions and form; and
- if it is agreed that NLFAB should remain a non-departmental public body (NDPB), to review NLFAB's control and governance arrangements to ensure that it complies with recognised principles of good corporate governance (as set out in the Cabinet Office's guidance on NDPB reviews).<sup>29</sup>

The triennial review will be held in two stages:

- Stage 1 – to consider whether the function of the NDPB is still needed and, if so, how this function might best be delivered; and
- Stage 2 – where the outcome of Stage 1 is that the NDPB should remain, to review the control and governance arrangements in place.

The triennial review will be undertaken by a review team consisting of an independent reviewer; a member of the sponsor team; and a secretariat.

The triennial review will be announced in a Written Ministerial Statement that will be placed in both Houses of Parliament. The review will start on 10th October 2013 and the results will be published by the end of March 2014.

NLFAB is an advisory NDPB set up in 2009 to provide impartial scrutiny and advice on the suitability of the FDP submitted by prospective operators of new nuclear power stations. The Board advises the Secretary of State on the financial arrangements that operators submit for approval, and on the regular review of funding.

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<sup>29</sup> Cabinet Office guidance on reviews of NDPBs:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf)

**Stakeholders consulted on NLFAB for the Triennial Review**

**NLFAB members:**

Janet Balfour

Anne Baldock

Antony Barker

Simon Carroll

Norman Harrison

Simon O'Regan

Anthony White

**Advisers**

KPMG

Nuclear Decommissioning Authority

Slaughter and May

**Operators**

EdF Energy

Horizon Nuclear Power

**Triennial Review questions put to stakeholders (listed in annex B)****Stage 1: the function and form of NLFAB**

**Does the core function performed by NLFAB, to provide impartial scrutiny and advice on the suitability of the FDP submitted by prospective operators of new nuclear power stations, continue to be necessary and appropriate?**

*You might wish to consider questions such as: is independent scrutiny of and advice on the FDP necessary; what are the benefits of NLFAB's advice; what might be the impact if such advice was withdrawn?*

**If you consider that NLFAB's core function remains valid, is the function best delivered by a non-departmental public body (NDPB)?**

*You might wish to consider some alternatives such as: could the function be delivered by local government, or the voluntary or private sectors; could it be taken 'in house' and performed by civil servants in DECC or elsewhere in government; could the function be delivered through more informal ad hoc arrangements; or could the function be merged with another NDPB?*

**If you believe that NLFAB's function remains valid and should continue to be delivered by NLFAB as a NDPB, please consider the questions below on NLFAB governance.**

**Stage 2: the control and governance of NLFAB**

- |   |
|---|
| 1. Does the Minister and sponsoring department exercise appropriate scrutiny and oversight of NLFAB, including oversight of any public monies spent by, or on behalf of, NLFAB? |
| 2. Are the NLFAB Terms of Reference accessible and understood by DECC and by all board members? Are they regularly reviewed and updated?  |
| 3. Is there a dedicated sponsor team within DECC with a clearly defined role?   |
| 4. Is there regular and on-going dialogue between DECC and NLFAB? Could it be improved?   |
| 5. Is NLFAB appropriately resourced to fulfil its function?   |
| 6. Are members drawn from a wide range of diverse backgrounds?  |
| 7. Does NLFAB as a whole have an appropriate balance of skills, experience, independence and knowledge?   |

<b>8. Do members allocate sufficient time to NLFAB to discharge their responsibilities effectively?</b>
<b>9. Is there a proper induction process for new members led by the Chair?</b>
<b>10. Are there regular reviews by the Chair of individual members' training and development needs?</b>
<b>11. Do all members ensure that high standards of corporate governance are observed at all times, including ensuring that NLFAB operates in an open, accountable and responsive way?</b>
<b>12. Where appropriate, has NLFAB established clear and effective channels of communication with key stakeholders?</b>
<b>13. Does NLFAB engage and consult with the public on issues of real public interest or concern, including for example, holding open meetings or annual public meetings?</b>
<b>14. Are there robust and effective systems in place to ensure that NLFAB is not, and is not perceived to be, engaging in political lobbying?</b>
<b>15. Are all members aware of the Code of Conduct that sets out the standards of personal and professional behaviour expected of all members and which follows the Cabinet Office Code? Is it part of the terms and conditions of appointment?</b>

**NLFAB meetings 2009-2014**<sup>30</sup>

<b><u>2009/2010</u></b>	<b><u>2010/2011</u></b>	<b><u>2011/2012</u></b>	<b><u>2012/2013</u></b>	<b><u>2013/2014</u></b>
26-27 Nov 2009	6-7 Oct 2010	6 Apr 2011	3 Apr 2012	12 April 2013
3-4 Feb 2010	9 Dec 2010	15 Jun 2011	17 Apr 2012	26 Apr 2013
<b>2 meetings</b>	<b>2 meetings</b>	13 Sep 2011	25 Apr 2012	2 May 2013
		14 Dec 2011	8 May 2012	12 June 2013
		2 Feb 2012	18 May 2012	4 Jul 2013
		22-23 Mar 2012	13 Jun 2012	11 Jul 2013
		<b>6 meetings</b>	26 Jun 2012	28 Oct 2013
			18 Jul 2012	6 Nov 2013
			28 Aug 2012	5 Dec 2013
			17 Sep 2012	4 Feb 2014
			17 Oct 2013	<b>10 meetings</b>
			12-13 Nov 2012	
			29 Nov 2012	
			12-13 Dec 2012	
			29 Jan 2013	
			14-15 Feb 2013	
			14-15 Mar 2013	
			<b>17 meetings</b>	

<sup>30</sup> Figures include both face to face meetings and meetings by teleconference.

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Any enquiries regarding this publication should be sent to:

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